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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,225	03/12/2004	Valerie Kazich	VAK-P-03-001	8558
29013	7590	10/26/2007	EXAMINER	
PATENTS+TMS, P.C.			WEINSTEIN, STEVEN L	
2849 W. ARMITAGE AVE.			ART UNIT	PAPER NUMBER
CHICAGO, IL 60647			1794	
			MAIL DATE	DELIVERY MODE
			10/26/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/800,225

**Applicant(s)**

KAZICH, VALERIE

**Examiner**

Steven L. Weinstein

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

Art Unit: 1794

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-20 are rejected under 35USC112, 1<sup>st</sup> para. for containing new matter.

The recitations, in claims 1,8, and 13, that the bottom or base is "rigid", appears to be New Matter, not supported by the specification. Also, the recitations, in claims 1,8, and 13, that the lip extends above the top layer or the absorbing means, also appears to be New Matter, not supported by the specification as originally filed.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3,8,13,17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ackalusk (2,803,550) in view of Taylor (2,735,778) or vice versa, i.e., Taylor in view of Ackalusk, both further in view of Perkins (2003/0087011), Pagnini (3,306,512), Blant (GB2293751), Rizzuto (4,938,411), Oshio (2002/0029697), Suzuya Shokuhin (JP 11-137179), and Smith (5,770,250), essentially for the reasons fully and clearly detailed in the Office action mailed 12/5/06, further in view of Goodwin (4,756,939), Miller (4,321,997), Rhodes et al (4,940,621), and Hansen et al (4,865,855).

In regard to claim 1, Ackalusk discloses it was well established in the art to provide an apparatus for collecting drips from a frozen treat, the apparatus comprising a base defined by a perimeter wherein the base has a center point and the perimeter is

equidistant from the center point (Ackalusky disclosing square or round bases – col. 2, para. 4), and wherein the base has a top layer (24) covering a bottom layer (18) wherein the base is planar and the bottom layer is made from a material that is substantially rigid in that it is self-supporting and is made of some of the same materials disclosed by applicant (e.g., plastic and cardboard, molded wood pulp, etc.); and wherein the top layer is an absorbent material and the bottom layer extends to a point outside of the outer edge of the top layer without overlapping the top layer; said apparatus further comprising a lip (14) integrally formed on the perimeter of the base (actually, the bottom layer) wherein the lip extends to a point above the top layer and wherein the lip is perpendicular to the base, and a passage at the center point of the base, wherein the passage forms an opening through the top layer of the base and the bottom layer of the base. Taylor, Pagnini (3,306,512), Blant (GB2293751), Rizzuto (4,938,411), Oshio (2002/0029697), Suzuya Shokuhin (JP 11-137179), and Smith (5,770,250) are relied on as further evidence that it was notoriously conventional to provide anti-drip devices, including ones with upstanding lips like Ackalusky and applicant's, which lips or upstanding walls help to retain the drippings (which is, of course, applicant's reason for providing upstanding walls). Claim 1 arguably differs from Ackalusky in the recitation that the outer edge of the top layer is "adjacent" to the lip (i.e., how close is "adjacent"?). Ackalusky does not appear to disclose the extent of the top absorbing layer, other than to show it in the figures. Ackalusky provides the top absorbing layer for the reason applicant employs the layer and that is to absorb the drippings. Therefore, since Ackalusky is employing the top layer for its art recognized

Art Unit: 1794

and applicant's intended function, the extent of the top layer, or its dimensions, if you will, is seen to have been an obvious matter of degree and an obvious result effective variable, routinely determinable, and an obvious optimization at best, based on such variables as the degree of absorbency of the material (which is a function of the absorbent properties of the material itself, its thickness, etc.). In any case, Taylor can be relied on as evidence to show it was a well known to extend the absorbent material substantially over the lower support layer of a drip guard and Goodwin, Miller, Rhodes et al, and Hansen et al disclose it was well established to have a moisture absorbent top layer extend to adjacent the lip or upturned walls of a bottom layer or tray structure (which is what the claims recite). To modify Ackalusky and extend the top absorbent layer adjacent to the lip (or upturned wall) of the base would therefore have been obvious for the reasons given above. Goodwin, Miller, Rhodes et al, and Hansen et al are all analogous art since they are all directed to the same generic problem that Ackalusky and applicant are concerned with; i.e., catching and retaining drippings in an enclosure. Claims 2,3,8,13,17 and 18 are rejected for the reasons given both above and in the last Office action.

Claims 4-7, 9-12,14,15,16,19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable in view of the references applied above, further in view of Huffer et al (6,457,585), Penick et al (4,336,664), Freedman et al (2,585,924), Lipper (6,814,234), Moravick et al (3,704,892), Shin (4,648,548), Knoerzer et al (6,746,743), Gottschalk (3,835,564), Goldstein (3,100,642), Witkowski et al (5,676,401), McClung et al (6,755,711), and Bellet (2,711,541).

Claims 4-7 differ from the combination in the recitation that an adhesive sticker, a washable tattoo, a partition in the base or a mark is associated with the base, respectively. As evidenced by Huffer et al, Penick et al, Freedman et al, Lipper, Moravick et al, Shin, Knoerzer et al, Gottshalk, Goldstein Witkowski et al, McClung et al and Bellet, it was notoriously conventional to provide an article that is to be associated with a product (such as a package associated with contents) with adhesive stickers, or washable tattoos, or partitions in the article such as the package (to allow for separation of an article of interest), or a mark. To modify the combination and provide these conventional elements for their art recognized and applicants intended function would therefore have been obvious. Claims 9-12, 14 and 15 are rejected for the reasons given above. In regard to claims 9,10,11, and 12, the particular layer that the elements recited (such as the sticker or partition) are attached to, or associated with, is seen to have been an obvious matter of choice. Claims 19 and 20 recite that the cover is removed from the base and the base is used as a disk. The art taken as a whole discloses that the cover can be laminated or the cover element can be positioned on the base (such as in the teaching in Ackalusky). Whether one removes the cover and what one does with the base after removal of the cover is seen to have been an obvious matter of choice or design; especially since the art taken as a whole teaches converting articles of one utility such as packages into articles of other utility such as entertainment or amusement devices. Note, too, it was well established to associate drip catching absorbent layers with tray type structures either by bonding or just a loose attachment

Art Unit: 1794

as is done, for example, with meat trays, as shown e.g., by Goodwin, Miller, Rhodes et al, and Hansen et al.

All of applicant's remarks filed 8/15/07 have been fully and carefully considered but are not found to be convincing for the reasons given previously, along with the new ground of rejection set forth above. Substantially all of applicant's remarks are moot in view of the new ground of rejection, which was necessitated by the amendment. In regard to the urging that there is no motivation to combine the elements recited in claims 4-7, 9-12,14,15,16,19 and 20 with a frozen treat (or presumably a device for use with a frozen treat) this urging is not convincing. Patentability is predicated on what the art taken as a whole teaches. Also, the secondary reference can teach both the "problem", if you will, and the solution. The teaching to combine can be all in the secondary reference. All of the features recited in the claims are conventionally known in the art for applicant's intended function, and the art taken as a whole teaches that these conventional recited features can be associated with conventional diverse articles such as packages for association with various contents. To apply these conventional features to another conventional article would have been unequivocally obvious.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

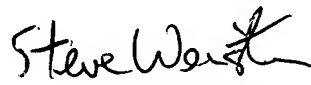
Art Unit: 1794

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1794  
10/28/07